

Office of Management and Budget, room 3228, NEOB, Washington, D.C. 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Joe Mink, CFTC Clearance Officer, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; telephone (202) 418-5170.

List of Subjects in 17 CFR Part 30

Commodity futures.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a, the Commission hereby proposes to amend part 30 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Section 30.3 is proposed to be amended by revising paragraph (a) to read as follows:

§ 30.3 Prohibited transactions.

(a) It shall be unlawful for any person to engage in the offer and sale of any foreign futures contract or foreign options transaction for or on behalf of a foreign futures or foreign options customer, except in accordance with the provisions of this part: Provided, that, with the exception of the disclosure and antifraud provisions set forth in §§ 30.6 and 30.9 of this part, the provisions of this part shall not apply to transactions executed on a foreign board of trade, and carried for or on behalf of a customer at a designated contract market, subject to an agreement with and rules of a contract market which permit positions in a commodity interest which have been established on one market to be liquidated on another market.

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Issued in Washington, D.C. on December 5, 1995 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95-30046 Filed 12-8-95; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM96-5-000]

Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act

November 29, 1995.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed rule; notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission is initiating an inquiry into the Commission's policy respecting the application of its jurisdiction under the Natural Gas Act and the Outer Continental Shelf Lands Act over natural gas facilities and services on the Outer Continental Shelf (OCS). The notice of inquiry is intended to receive information respecting the structure and operation of natural gas gathering and transportation on the OCS and the effects of the Commission's current policy. The notice of inquiry solicits comments on the legal and policy issues to be considered, in either maintaining or departing from the Commission's present policy, the operational considerations pertaining to OCS exploration and development activities, and pipeline systems that the Commission should take into account in its review of its current policy. The notice of inquiry invites all interested persons to participate in the inquiry and to submit answers to several specific questions.

DATES: Written comments must be received on or before January 12, 1996; an original and 14 copies should be filed.

ADDRESSES: All comments should refer to Docket No. RM96-5-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Robert Wolfe, Office of the General Counsel, 888 First Street, N.E., Washington, DC 20426, (202) 208-2098.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission is initiating an inquiry into the Commission's policy respecting the application of its jurisdiction under the

Natural Gas Act (NGA) and the Outer Continental Shelf Lands Act (OCSLA) over natural gas facilities and services on the Outer Continental Shelf (OCS).

The Commission is initiating this Notice of Inquiry (NOI) to examine the structure and operation of natural gas gathering and transportation on the OCS and the effects of the Commission's current policy. The NOI will also seek information on the legal and policy issues to be considered, in either maintaining or departing from the Commission's present policy, the operational considerations pertaining to OCS exploration and development activities, and pipeline systems that the Commission should take into account in its review of its current policy.

II. Background

The Commission's current policy respecting the jurisdictional status of gas pipelines and services on the OCS presents a number of issues concerning the status, scope, and effects of the Commission's regulation of gathering and transportation on the OCS. The Commission has determined that it should undertake a review of these issues.

Increases in successful offshore exploration and development activities, particularly in the Gulf of Mexico, have heightened the significance of these jurisdictional issues. Recently, several companies have either filed requests for, or have indicated their intent to request, exempt gathering status for offshore pipeline systems that each is eager to construct to bring gas onshore from significant newly developed deep water reserves in the Gulf. There are also pending requests for declaratory orders concerning existing certificated offshore systems.

There are 18 existing interstate pipelines on the Outer Continental Shelf (OCS) in the Gulf of Mexico that are presently subject to the Commission's regulation under the NGA. There are also numerous facilities that are not under NGA jurisdiction. These are principally producer-owned facilities. It is noteworthy that an estimated 27% of the lower 48 State's total dry gas production comes from the Gulf of Mexico OCS.¹

The various OCS pipeline system proposals and Sea Robin Pipeline Company's request for rehearing of the Commission's June 16, 1995 order in Docket No. CP95-168-000² have prompted reexamination of the

¹ See, *Natural Gas Production for the Lower 48 States 1982 through 1993*, Energy Information Agency, March 1993.

² 71 FERC ¶ 61,351 (1995).

Commission's approach to regulating OCS facilities. Given the continuing importance of the OCS as a source of natural gas, a principal aim of the Commission is to develop regulatory policies that do not impede or distort developmental activities on the OCS.

III. The Statutory Framework

A. The Natural Gas Act (NGA)

The basic purpose of Congress in enacting the NGA was to "occupy the field" ³ of the regulation of natural gas moving in interstate commerce by the primary grant of jurisdiction to the Commission over those aspects of such regulation over which the states may not act.⁴ To that end, Congress meant to create a comprehensive regulatory scheme of dual state and federal authority.⁵ Section 1(b) of the NGA embodies the primary grant of jurisdiction to the Commission. At the same time, section 1(b) exempts from the Act's coverage "the production or gathering of natural gas." Thus, section 1(b) first grants to the Commission broad plenary authority to regulate the business of transporting and of wholesaling natural gas moving in interstate commerce. Secondly, section 1(b), by operation of the "production and gathering" exemption, removes from that plenary grant of federal jurisdiction those aspects of natural gas regulation which are the proper subject of state regulation.⁶

B. The Outer Continental Shelf Lands Act (OCSLA)

Additional sources of regulatory authority over OCS pipeline facilities and activities are sections 5(e), and 5(f)(1), of the OCSLA.⁷ Generally, sections 5(e) and 5(f)(1) of the OCSLA give the Commission certain responsibilities and authorizations to ensure that natural gas pipelines on the OCS transport for non-owner shippers in a nondiscriminatory manner and operate in accordance with certain competitive principles.

Section 5(e) of the OCSLA requires pipelines to transport natural gas produced from the OCS "without discrimination" and in such "proportionate amounts" as the Commission, in consultation with the Secretary of Energy, determines to be

reasonable. In addition, section 5(f)(1) of the OCSLA requires pipelines transporting gas on or across the OCS to adhere to certain "competitive principles". These "competitive principles" include a requirement that the pipeline must provide "open and nondiscriminatory access to both owner and nonowner shippers."

The applicability of the provisions of sections 5(e) and 5(f)(1) is not restricted to interstate pipelines that are subject to the Commission's NGA jurisdiction. The only pipelines that may be exempt from the Commission's authority under the OCSLA are certain "feeder lines," which are defined in section 5(f)(2) of the OCSLA ⁸ as a pipeline that feeds into a facility where oil and gas are "first collected" or a facility where oil and gas are "first separated, dehydrated, or otherwise processed." These "feeder lines" may only be exempted from the requirements of the OCSLA by order of the Commission.

IV. The Commission's Current Policy

In 1989, in response to the court's decision in *EP Operating v. FERC (EP Operating)*,⁹ which reversed a Commission determination that a 51-mile long, 16-inch diameter OCS pipeline was a jurisdictional transportation facility, the Commission set upon a review of its "gathering policy." The purpose of that review was to assess the impact of *EP Operating* as well as the continuing viability and relevance of the "primary function" test, which at that time was the Commission's preferred methodology for determining the jurisdictional status of gas pipeline facilities.¹⁰ That review culminated in the Commission's articulation and application of the

"modified primary function" test in *Amerada Hess, et. al. (Amerada Hess)*.¹¹

As set out in *Amerada Hess*, the "modified primary function" test consists of the continued application of the "primary function" test, with a modification in its application in accord with *EP*. Specifically, when applying the *Farmland* criteria, the Commission stated that it would consider, especially for offshore facilities, the changing technical and geographic nature of exploration and production. The order explained that because of recent advances in engineering and available technology, offshore drilling operations were moving further offshore and further from existing interstate pipeline interconnections. Accordingly, the order explained that a relatively long pipeline on the OCS may be consistent with a primary function of gathering or production whereas an onshore pipeline of similar length would not. Therefore, in applying the "modified primary function" test to OCS pipeline facilities the Commission stated that it would apply, in effect, a sliding scale that would allow for the use of gathering pipelines of increasing lengths and diameters in correlation to the distance from shore and the water depth of the offshore production area.

V. Specific Questions for Response by All Commenters

The Commission has compiled a list of questions, set forth below, that will be helpful in assessing the Commission's current policy and possible policy alternatives. This list is not meant to be all inclusive. Parties to this proceeding are invited to present alternative solutions not specifically referenced in this notice.

A. General.

1. It is necessary or appropriate to continue distinguishing between gathering and transportation on the OCS, or would it be better either to declare that under the NGA all such facilities are exempt gathering facilities or to declare that under the NGA all such facilities are jurisdictional transportation facilities?

2. Does the Commission need to continue to regulate offshore transportation under the NGA, or is reliance on the OCSLA sufficient to protect the public interest?

3. Is there a "regulatory gap" pertaining to rates or any other matter respecting gas pipeline facilities or services on the OCS?

4. What is the extent of the Commission's authority under the

⁸ 43 U.S.C. § 1334(f)(2).

⁹ 876 F. 2d 46 (Fifth Cir. 1989).

¹⁰ The "primary function" test was articulated in *Farmland Industries, Inc. (Farmland)*, 23 FERC ¶ 61,063 (1983). In *Farmland* the Commission enumerated several physical and geographic criteria to be included in the analysis for determining whether the "primary function" of a facility is the transportation or the gathering of natural gas. These factors are: (1) the length and diameter of the line, (2) the extension of the facility beyond the central point in the field, (3) the line's geographic configuration, (4) the location of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) the operating pressure of the line. The "primary function" test has been found by the Commission to be applicable to both onshore and offshore facilities. The criteria set out in *Farmland* were not intended to be all inclusive. The Commission has also considered nonphysical criteria such as the intended purpose, location, and operation of the facility, the general business activity of the owner of the facility, and whether the jurisdictional determination is consistent with the objectives of the NGA and the Natural Gas Policy Act of 1978 (NGPA).

¹¹ 52 FERC ¶ 61,268 (1990).

³ See *Schneidwind v. ANR Pipeline Co.*, 485 U.S. 293, 310-311 (1988).

⁴ *Interstate Natural Gas Co. v. FPC*, 331 U.S. 682 (1947).

⁵ *FPC v. Louisiana Power & Light Co.*, 406 U.S. 621 (1972).

⁶ See, e.g., *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672, 682-84 (1954); *Interstate Natural Gas Co. v. FPC*, *supra* at 690.

⁷ 43 U.S.C. § 1334(e), (f)(1).

OCSLA respecting rates for gas pipeline services?

5. Does the OCSLA provide sufficient remedial authority for the Commission to ensure nondiscriminatory access by prohibiting discriminatory or excessive rates?

6. Does the OCSLA provide the Commission with sufficient authority to protect the interests of historical customers of existing offshore interstate pipelines if these pipelines were declared to be gathering facilities?

7. Is it feasible, as a matter of law and policy, to adopt a light-handed regulatory approach that relies on complaints about discriminatory access or rates?

8. If such an approach is adopted, is there a need to distinguish between new and existing pipelines to determine how much regulation is necessary? What would be the legal and policy basis for any such distinction?

9. What are the implications of a change in OCS gathering policy on existing OCS interstate pipelines that may wish to retain their jurisdictional status or on existing, interstate pipeline-owned, OCS transmission facilities that wish to retain a transmission classification for those facilities?

10. How much, if any, OCS gas is processed at locations other than onshore or in shallow waters?

B. Should the Commission issue a rule under the NGA declaring all pipeline facilities on the OCS to be nonjurisdictional gathering facilities and simultaneously issue a rule under the OCSLA imposing terms and conditions on OCS facilities to protect existing shippers on existing OCS interstate pipelines or on existing OCS transmission facilities?

1. What would be the practical effect of these rules?

2. Does the Commission have sufficient authority under the OCSLA to prohibit, eliminate or alter rates that are clearly discriminatory or rates that are so high that they would have the effect of denying access to shippers?

3. What would be the impact of the Commission's ceasing to regulate any offshore pipeline rates under the "just and reasonable" standard of sections 4 and 5 of the NGA?

4. Is here a legal basis under the OCSLA for the Commission to regulate generally the level of rates for services performed by OCS pipelines?

5. What conditions could the Commission require under the NGA and/or the OCSLA to protect historical customers of currently regulated OCS pipelines if their facilities are declared to be exempt gathering facilities?

6. Under this option, should the Commission consider allowing all rate regulation to end at any point that a pipeline and a (non-affiliated) shipper agree? (This option would be similar to recent proposals for "recourse rates".¹²)

C. Should the Commission issue a rule under the NGA declaring all pipeline facilities on the OCS to be jurisdictional transportation facilities, but only regulate transportation rates for historical customers on existing interstate pipelines and for non-owner shippers on new facilities?

1. What would be the practical effect of such a rule?

2. Does a "regulatory gap" exist on the OCS that would support the issuance of such a rule?

3. What legal support is there for the Commission's regulating only those pipelines that transport non-owner shipper gas?

4. Is there any need to regulate the rates charged new customers that have not relied upon or have no expectation of NGA regulation?

5. Would the provisions of the OCSLA provide sufficient protection from undue discrimination to both historical and new customers of OCS pipelines?

6. Under this option, should the Commission consider allowing all rate regulation to end at any point that a pipeline and a (non-affiliated) shipper agree? (This option would be similar to recent proposals for "recourse rates".¹³)

D. Should the Commission continue the application of the "modified primary function" test on a case-by-case basis? What would be the effects of this approach?

VI. Procedure for Comments

The Commission invites interested persons to submit comments, data, views, and other information concerning the matters set out in this notice.

To facilitate the Commission's review of the comments, commenters are requested to provide an executive summary of their position on the issues raised in the NOI. Commenters are requested to identify the specific question posed by the NOI that their discussion addresses and to use appropriate headings. Additionally, commenters should double space their comments.

The original and 14 copies of such comments must be received by the Commission before 5:00 p.m., Friday, January 12, 1996. Comments should be

¹² Under "recourse rates", pipelines would be free to offer negotiated rates. Customers could choose either negotiated rates or they could choose the pipeline's on-file, cost-of-service rates.

¹³ See n. 13 *supra*.

submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426 and should refer to Docket No. RM96-5-000.

In addition, commenters are asked to submit their written comments and executive summaries on a 3 1/2-inch diskette formatted for MS-DOS based computers. In light of our ability to translate MS-DOS based materials, the text need only be submitted in the format and version that it was generated (i.e. MS WORD, WordPerfect, ASC III, etc.) For Macintosh users, it would be helpful to save the documents in word processor format and then write them to files on a diskette formatted for MS-DOS machines.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95-30062 Filed 12-8-95; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-0003-95]

RIN 1545-AT92

Source of Income From Sales of Inventory and Natural Resources Produced in One Jurisdiction and Sold in Another Jurisdiction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations governing the source of income from sales of natural resources or other inventory produced in the United States and sold in a foreign country or produced in a foreign country and sold in the United States. This document affects persons who produce natural resources or other inventory in the United States and sell in a foreign country, or produce natural resources or other inventory in a foreign country and sell in the United States. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of oral comments to be presented at the public hearing scheduled for April 10, 1996, at 10 a.m. must be received by March 11, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (INTL-0003-95),